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facts it has been held that the witness is exempt only in his personal capacity. *Currie Fertilizer Co. v. Krish*, (Ky.) 74 S. W. 268; *Linn v. Hagan*, 121 Ky. 627, 87 S. W. 1101; *Breon v. Miller Lumber Co.*, (S. C.) 65 S. E. 214, 24 L. R. A. N. S. 276. However, the weight of authority apparently supports the holding in the principal case that the exemption applies to a witness in both his personal and representative capacities. *Sewannee Coal, Coke & Land Co. v. Williams*, 120 Tenn. 339, 107 S. W. 968; *Mulhearn v. Press Pub. Co.*, 53 N. J. Law 153, 21 Atl. 186, 11 L. R. A. 101. See also 32 Cyc. 493 and 24 L. R. A. N. S., note. On the second point, there appear to be only two reported cases which have held that a suitor or witness is not exempt from service while in an intermediate state en route to or from a trial. *Holyoke Coal, Coke & Land Co. v. Ambden*, 55 Fed. 593, 21 L. R. A. 319; *Cronk v. Wheaton*, 15 Pa. Dist. Rep. 721. On the other hand, the doctrine that such persons are exempt from service when in an intermediate state is supported by the decision of one case and the dictum of another. *Lofge v. Lowes*, 131 Tenn. 626, 176 S. W. 106, L. R. A. 1916A 734; *Barber v. Knowles*, 77 Oh. St. 81, 82 N. E. 1065, 14 L. R. A. N. S. 663, 11 Ann. Cas. 1144. Further, the rule of the principal case as applied to intermediate counties is supported by authority. *Tyrone Bank v. Doty*, 2 Pa. Dist. Rep. 558, 12 Pa. Co. Ct. 287; *Hoffman v. Judge of Circuit Ct.*, 113 Mich. 109, 71 N. W. 480, 38 L. R. A. 663, 67 Am. St. Rep. 458. Thus it seems that the interpretation of the Oklahoma statute, while very liberal and extensive in its application, is in accord with the better reason and authority. For a discussion of the question as to whether this defect in service was waived by pleading to the merits after the plea to the jurisdiction was overruled, see the following note.

PROCESS—WAIVER OF DEFECT IN SERVICE BY PLEADING TO MERITS.—The defendant corporation, after excepting to the order of the court overruling its plea to the jurisdiction, went to trial on the merits. Judgment was rendered for the plaintiff and an appeal taken. Held, that the defendant did not waive the jurisdictional objection by contesting the case on the merits. *Commonwealth Cotton Oil Co. v. Hudson*, (Okla. 1916) 161 Pac. 535.

The decisions of the various courts of the United States are in hopeless conflict on the question of waiver raised in the principal case. 16 L. R. A. N. S. 177, note; L. R. A. 1916E 1082, note. For a full discussion of the question, see "PRESERVING A SPECIAL APPEARANCE," 9 MICH. L. REV. 396. While it may seem incongruous to maintain that one can contest a cause on its merits and still not waive objections to the jurisdiction, yet it may be answered that it is hardly fair for a defendant to be deprived of the benefit of jurisdictional defects when he, in court under protest, defends himself under compulsion rather than suffer judgment by default. This is the reasoning on which the decision in the principal case was based. For a discussion of the precise jurisdictional question involved in this case, see the preceding note.

WILLS—EXTRAORDINARY STOCK DIVIDEND AS RESIDUE.—At the time of making her will, testatrix was the owner of 30 shares of stock in the Stand-

ard Oil Company. Before her death this company, by virtue of a decree by the United States Supreme Court ordering its dissolution, distributed its holdings in subsidiary companies among its stockholders, and testatrix thereby became the owner of shares in 39 corporations, retaining at the same time the original 30 shares. The legatee of these shares claimed that this was a specific legacy which would be construed as of the time of the execution of the will, and that the shares in the subsidiary companies, which when the will was drawn were held by the parent corporation and gave the primary shares their value, were part of her legacy. *Held*, that the shares were in effect an extraordinary dividend, which, having been declared during the life of the testatrix, passed to the residuary legatee. *In re Brann* (N. Y. 1917), 114 N. E. 404.

The question whether a legacy is adeemed upon the reorganization of a corporation and the reissue of stock by it, has not often been before the courts. See *COOK, CORP.*, §306. In *Pope v. Hinkley*, 209 Mass. 323, 95 N. E. 768, the question was discussed, but it appears from the facts that the actual exchange of shares was not made until after the death of testator, though the agreement to reorganize and the dissolution of the old corporation were effected during the testator's life. In *re Pierce*, 25 R. I. 34, 54 Atl. 588, where there was a consolidation of several corporations, and in addition to the new stock issued a small cash payment was made to "equalize values," comes to the same conclusion, that the legacy was not adeemed. In *Turner v. Leeming*, [1912] 1 Ch. 828, during the life of testator a corporation was dissolved and reorganized, and a bequest of 10 shares was held not to have been adeemed, for the "subject matter remained, though changed in form and number," and the legatee was entitled to the 40 shares of stock (equal in par value) issued by the reconstructed company. See also *Mallam v. McFie*, [1912] 1 Ch. 29. But compare *In re Slater*, [1907] 1 Ch. 665, where it was held that a legacy of stock to the value of £1075 was adeemed upon the merger of one corporation into a second, when testator received shares in the second corporation valued at £3700, upon the grounds that this was not a substitution but an "extinction or annihilation of the original property." *Brundage v. Brundage*, 60 N. Y. 544, is cited by the court as authority for the decision in the principal case. In that case the stock issued between the time of making the will and the death of the testator might more truly be said to have been a dividend, for it represented earnings spent for improvements; while in the principal case the distribution was of the assets of the parent corporation and part of the "essence of the original shares," which is evidenced by the fact that at the time of the death of the testator the value of the thirty shares had been diminished to the extent of one-third of their former value. The question whether a stock dividend is income to which the life-tenant is entitled, or is a part of the corpus which must be preserved for the remainderman, has frequently been the subject of litigation, which has resulted in a sharp conflict of authority. *Matter of Osborne*, 209 N. Y. 450, 103 N. E. 723; see note in 12 L. R. A. (N. S.) 768, to *Holbrook v. Holbrook*, 74 N. H. 201, 66 Atl. 124; *COOK, CORP.*, §§552-560.